

Application No. 10/765,304  
Amendment dated March 17, 2008  
Reply to Office Action of January 11, 2008

### REMARKS/ARGUMENTS

Applicant has carefully reviewed and considered the Office Action mailed on January 11, 2008, and the references cited therewith.

Claims 1, 3, 9, 18, 19, 28, 29, 33, and 37 are amended and no claims are canceled or added; as a result, claims 1-37 are now pending in this application.

#### Claim Objections

Claims 1-15, 18, 19, 28 and 37 were objected to by the Examiner. Applicant has endeavoured to amend the above claims according to the Examiner's helpful remarks.

As such, Applicant respectfully requests reconsideration and withdrawal of the claim objections to the above claims.

#### § 112 Rejection of the Claims

Claim 8 was rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant submits that claim 8 recites an "identifiable bug" in a manner that particularly points out and distinctly claims the subject matter in the application.

The Applicant's specification states that executable instructions can be used to find a device where "the device has a firmware version that includes a bug in it" at page 10, lines 12-13. The Applicant's specification also states that a routine can detect the "existence of a bug in the program instructions" at page 14, lines 19-20 and that the "existence of an identifiable bug in the executable instructions in the device" can be used to determine whether a driver is appropriate for a device at page 7, lines 11-12. As one skilled in the art will recognize, these bugs recited in the specification are referring to errors in software, hardware, and/or firmware which are commonly called bugs in the computing field.

Accordingly, the Applicant respectfully requests reconsideration and withdrawal of the § 112 rejection of dependent claim 8.

Application No. 10/765,304  
Amendment dated March 17, 2008  
Reply to Office Action of January 11, 2008

§ 101 Rejection of the Claims

Claims 29-32 were rejected under 37 USC 101 because the claimed invention is directed to non-statutory subject matter. Applicant has amended claim 29 to include the statutory subject matter of "a computer readable storage medium having program instructions that are executed by a computing device to cause a device to perform a method." Support for amended claim 29 can be found at page 9, lines 10-15 of the Applicant's specification where the specification states "many of these devices include processor(s) and memory hardware. Computer executable instructions, (e.g., software and/or firmware) reside in memory, such as on a management station or other device, to manage a device feature, and/or manage a network".

Applicant respectfully submits that claim 29, as amended, is directed to statutory subject matter. As such, the Applicant respectfully requests reconsideration and withdrawal of the § 101 rejection of claims 29 as well as those claims that depend therefrom.

§ 102 Rejection of the Claims

Claims 1-7, 9-11, 13, 14, 16-24, 28-30 and 33-37 were rejected under 35 USC § 102(e) as being anticipated by Moore (U.S. Pub. No. 2004/0003135). Applicant respectfully traverses the rejection as follows.

Applicant does not admit that the Moore reference is indeed prior art and reserves the right to swear behind at a future date. Nonetheless, in the interest of advancing prosecution thereof, Applicant respectfully submits that the claims of the present disclosure are patentably distinguishable from the teachings of the Moore reference for at least the following reasons.

Independent claims 1, 16, and 29 each recite calling "a routine in a particular driver from the selected set of drivers which executes to determine whether the particular driver is most appropriate to perform the particular device function for a particular device."

Application No. 10/765,304  
Amendment dated March 17, 2008  
Reply to Office Action of January 11, 2008

Independent claim 9 recites “the particular driver having program instructions stored in memory and executable on the processor to: perform analysis to determine whether the particular driver is appropriate to perform a particular device function.” Also, independent claim 24 recites “selecting a particular driver from the selected set of drivers; and performing analysis within the particular driver to determine whether the particular driver is appropriate to perform a particular device function.”

Independent claim 33, as amended, recites “means for automatically selecting, from among a number of drivers, a particular driver having features which most closely correlates to a set of device features of a device, where a routine is called in the particular driver which executes to determine a correlation of the particular driver to the set of device features of a device.”

In contrast, the Moore reference appears to describe gathering “operating system information about the operating system and device information about the device and generates one or more device identifiers by concatenating the operating system information with the device information.” (page 1, paragraph [0010]). The Moore reference goes on to state that “the generated identifiers are then used to select and install the appropriate device driver for the device.” (page 1, paragraph [0010]).

In Moore, an application program interface appears to have “software routines that perform various device driver installation tasks such as searching the INF files and building a potential list of device drivers associated with the new device.” (page 2, paragraph [0026]). The Moore reference appears to use the application program interface, SETUP, to identify a potential driver, add them to the list of potential drivers, and rank each possible driver. (page 3, paragraphs [0034] and [0035]).

Applicant respectfully submits that the Moore reference does not teach “call[ing] a routine in a particular driver from the selected set of drivers which executes to determine whether the particular driver is most appropriate to perform the particular device function for a particular device”, as recited in independent

Application No. 10/765,304  
Amendment dated March 17, 2008  
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claims 1, 16, and 29. The Moore reference appears to use a PnP Manager (280) to manage software routines from the SETUP application programming interface (220) to select the best driver for a device using INF files associated with the device and does not teach "performing analysis within the particular driver to determine whether the particular driver is appropriate to perform a particular device function", as recited in claim 24.

As such, Applicant respectfully submits that the Moore reference does not teach each and every element and limitation of independent claims 1, 9, 16, 24, 29, and 33. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 102 rejection of independent claims 1, 9, 16, 24, 29, and 33, as well as those claims that depend therefrom.

#### §103 Rejection of the Claims

Claims 15, 25, and 27 were rejected under 35 USC § 103(a) as being unpatentable over Moore (U.S. Pub. No. 2004/0003135). Applicant respectfully traverses the rejection as follows.

Claim 15 depends from independent claim 9 and claims 25 and 27 depend from independent claim 24. For the reasons stated above, the Applicant respectfully submits that the Moore reference does not teach, suggest, or render obvious each and every element of independent claims 9 and 24.

For example, the Moore reference does not appear to describe, teach, or render obvious, "the particular driver having program instructions stored in memory and executable on the processor to: perform analysis to determine whether the particular driver is appropriate to perform a particular device function", as recited in claim 9, or "selecting a particular driver from the selected set of drivers; and performing analysis within the particular driver to determine whether the particular driver is appropriate to perform a particular device function," as recited in claim 24.

As such, reconsideration and withdrawal of the § 103 rejection for dependent claims 15, 25, and 27 is respectfully requested.

Application No. 10/765,304  
Amendment dated March 17, 2008  
Reply to Office Action of January 11, 2008

Claims 12, 26, 31, and 32 were rejected under 35 USC § 103(a) as being unpatentable over Moore (U.S. Pub. No. 2004/0003135) as applied to claims 9, 24 and 29 above, and further in view of Philyaw (U.S. Patent No. 6,704,864).

Applicant respectfully traverses the rejection as follows.

Claim 12 depends from independent claim 9, claim 26 depends from independent claim 24, and claims 31 and 32 depend from independent claim 29. For the reasons stated above, the Applicant respectfully submits that the Moore reference does not teach, suggest, or render obvious each and every element of independent claims 9, 24, and 29.

From the Applicant's review of the Philyaw reference, the reference does not cure the deficiencies of the Moore reference. That is, the Philyaw reference, either independently, or in combination with the Moore reference, does not appear to teach, suggest, or render obvious each and every element and limitation of independent claims 9, 24, and 29. For example, the Moore and Philyaw references do not appear to describe, teach, or render obvious, "the particular driver having program instructions stored in memory and executable on the processor to: perform analysis to determine whether the particular driver is appropriate to perform a particular device function", as recited in independent claim 9. Nor does the Moore reference describe, teach, or suggest "selecting a particular driver from the selected set of drivers; and performing analysis within the particular driver to determine whether the particular driver is appropriate to perform a particular device function", as recited in independent claim 24. In addition, the Moore reference does not describe, teach, or suggest "a routine in a particular driver from the selected set of drivers which executes to determine whether the particular driver is most appropriate to perform the particular device function for a particular device", as recited in independent claim 29.

As such, reconsideration and withdrawal of the § 103 rejection for dependent claim 12, 26, 31, and 32 is respectfully requested.

Application No. 10/765,304  
Amendment dated March 17, 2008  
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CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney Edward J. Brooks III at (612) 236-0120 to facilitate prosecution of this matter.

At any time during the pendency of this application, please charge any additional fees or credit overpayment to the Deposit Account No. 08-2025.

CERTIFICATE UNDER 37 CFR §1.8: The undersigned hereby certifies that this correspondence is being transmitted to the United States Patent and Trademark Office Facsimile number (571) 273-8300 on this 17 day of March, 2008.

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